


Application Number 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/074,015	KAMIYA	
	Examiner	Art Unit	
	Duc T. Duong	2616	



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/074,015

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Satoshi Kamiya

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EXAMINER

DUONG, DUC T

ART UNIT

PAPER NUMBER

2616

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09/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/074,015

Applicant(s)

KAMIYA

Examiner

Duc T. Duong

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19, 24-26, 29-46 and 83-88 is/are allowed.
- 6) ☒ Claim(s) 20, 21, 27, 28 and 47-82 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 47-82 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding to claims 47-82, the claims called for a **program** causing a computer to perform such functions. In this instant, a computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things". They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. When the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory. See the following Interim Guidelines for further details:

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf .

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 2616

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 47-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 47-82, each of these claims defines both a method and an apparatus. Each claim as a whole is neither a definition of a method nor of an apparatus but is instead a hybrid of the two; it, therefore, does not define the invention in the manner contemplated by the second sentence of 35 U.S.C. Sec. 112 (see *In re Oakley*, 1935 C.D. 198, 454 O.G. 536, 73 F.2d 934, 24 USPQ 75). It seem the claims has a plurality of instructions when executed cause a computer to perform certain steps. However, there also appear in the claims numerous physical structures the computer used to perform the steps. Thus, the claims define both a method and an apparatus.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 20, 21, 27, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Lauffenburger et al (US Patent 6,661,774 B1).

Regarding to claims 20, 21, 27, and 28, Lauffenburger discloses a virtual output queuing controlling device 12 (fig. 1) in an input buffering switch with a virtual output queuing technique, comprising a first specialized class for a CBR traffic 14 (fig. 1 col. 10 lines 58-67); a second class 14 for the other traffics than the CBR traffic (fig. 1 col. 10 lines 58-67); a cell read-out controlling section 20 that reads out cells from each of said classes (fig. 1 col. 3 lines 44-53); and a connection request generation section 16 that makes a connection request for a switch scheduler 24 (fig. 1 col. 3 lines 41-44), which can execute a priority control, characterized in that, when said connection request generation section received connection request from said switch scheduler, said cell read-out controlling section is a section that reads out the cells from said first class prior to said second class (col. 3 lines 54-61 and col. 11 lines 3-11).

Response to Arguments

7. Applicant's arguments filed June 6, 2007 have been fully considered but they are not persuasive. Regarding to applicant's argument on page 3 of the Remarks, Lauffenburger only teaches of a single class for all traffic and that's' being reference 14 in fig. 1. In response, the examiner would like to direct applicant's attention to col. 3 lines 26-27. Herein, Lauffenburger discloses reference 14 represents a plurality of buffers. Thus, these plurality buffers are used to store different classes of traffic (col. 10

lines 58-67). Regarding to applicant's argument on page 4 of the Remarks, Lauffenburger fails to teach for making a connection request of said specialized class for CBR traffic prior to the connection request of the other classes. In response, the examiner would like to direct applicant's attention to col. 10 lines 57-67 and col. 11 lines 1-11. Herein, Lauffenburger discloses CBR traffic is treated with a higher priority than other classes of traffic. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the invention continuously reorganizes the scheduling ring as new cells are scheduled and rescheduled for transmission) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Regarding to applicant's argument on page 5 of the Remarks, Lauffenburger fails to teach of a three step priority control. In response, the examiner would like to point out Lauffenburger discloses of such control as cited in the above performing the same function as the claim. Thus, based on the reasons set forth here the rejections are maintained.

Allowable Subject Matter

8. Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 1-19, 24-26, 29-46, and 83-88 are allowed.

Conclusion

Art Unit: 2616

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DD
DD


WING CHAN
SUPERVISORY PATENT EXAMINER
8/30/07